

17

ADDRESS

OF THE

BOARD OF PRESIDENT AND DIRECTORS

OF THE

CHESAPEAKE AND DELAWARE
CANAL COMPANY,

TO THE

STOCK AND LOANHOLDERS

OF

THAT COMPANY.



PHILADELPHIA :

JOHN C. CLARK, PRINTER, 60 DOCK STREET.

1845.



Digitized by the Internet Archive
in 2018 with funding from

This project is made possible by a grant from the Institute of Museum and Library Services as administered by the Pennsylvania Department of Education through the Office of Commonwealth Libraries

ADDRESS
OF
THE BOARD OF PRESIDENT AND DIRECTORS
OF THE
CHESAPEAKE AND DELAWARE CANAL COMPANY.

THE Board of Directors of the Chesapeake and Delaware Canal Company, deem it a duty they owe to the Stock and Loanholders of that Company, and to the public at large, to state briefly, the situation in which the Company is now placed, and the circumstances under which the Board has hitherto acted, as well as its probable future course of policy.

This measure is rendered more necessary, in consequence of statements promulgated in various newspapers, and by other means, giving, as it is believed, erroneous views and inferences in relation to the operation of an Act, recently passed by the Legislature of Delaware, to prevent the Chesapeake and Delaware Canal Company from charging toll on passengers, and for other purposes. This law was passed, as it is said, at the instance, and by the influence of the officers and agents of the Philadelphia, Wilmington and Baltimore Railroad Company, and its coadjutor, the New Castle and Frenchtown Turnpike and Rail-road Company; and has been considered as an attack by these coalesced Companies, upon the interests of the Chesapeake and Delaware Canal Company. It appears to be evident, that the intention in procuring the passage of this law, is to prevent the use by passengers of a great public highway, by water, between the Northern and Southern sections of the country; and that thus travellers may be

compelled to pass over the Rail-roads, at prices much higher than they could be transported for, between Philadelphia and Baltimore, by steam-boats, by way of the Canal.

The Canal Company supposing they had the right to charge toll on passengers, commenced doing so immediately on the opening of the Canal, in 1829, when the Citizen's Line, between Philadelphia and Baltimore, began to carry passengers through the Canal, for which they paid toll to the Canal Company, and continued to do so until 1831. In the year 1830, the Union Line, from New Castle, put on a line of passenger barges, and paid the Canal Company compensation for the passengers using the Canal. In the year 1831, the Citizen's and Union Lines were united, and paid the Canal for the privilege of carrying passengers. In 1832, these united Lines left the Canal for the New Castle Rail-road, which was then completed. In 1833, the People's Line commenced carrying passengers through the Canal, and paid the Canal Company for the privilege of so doing. During part of 1834, the passengers by this Line crossed from Delaware City to Chesapeake in stages, instead of barges, and the New Castle and Frenchtown Company entered into a contract for the privilege of running a line of passenger barges through the Canal, for two years, for which they paid a consideration. From that time, there was no regular line for passengers, through the Canal, until 1842, when a line of Erricsson's propeller steamboats, for the transportation of passengers and merchandise, commenced; and in 1843, another line of the same description was added, both of which paid toll on passengers.

In 1843, an arrangement was made between the Chesapeake and Delaware Canal Company, and the Philadelphia, Wilmington and Baltimore Rail-road Company, and the New Castle and Frenchtown Turnpike and Rail-road Company, by which the toll on passengers, through the Canal, and the freight on merchandise, was adjusted between the several Companies. The right of the Canal to charge toll on passengers, not having been in the slightest manner questioned or objected to, on the part of either of the Rail-road Companies; on

the contrary, the right was acquiesced in and specifically acknowledged in the agreement, made between the Rail-road Companies and the Chesapeake and Delaware Canal Company.

This agreement was annulled on the 27th of March, 1844, and on the 21st of May, 1844, a notice was received from the Attorney General of Delaware, threatening to apply for a writ of quo warranto against the Canal Company, with a view to the forfeiture of its Charter. This was replied to, by stating the readiness of the Company to meet the issue. The notice and reply are subjoined. At whose instance this threat of judicial proceeding was made, or for what purpose intended, it is not necessary here to explain.

This statement of the use of the Canal by passengers, and the open, public, and published avowal of the charge of toll on them, is given for the purpose of showing that such was the practice long before, as well as since, either of the above mentioned Rail-road Companies were in existence, and therefore could not have been a recent infringement of their rights or chartered privileges. And, further, to show that the charging of toll on passengers was public and avowed, and was commenced at the opening of the Canal for navigation, in 1829; that it was known to the officers of the different States interested in its Charter; and after having been thus notoriously public, the Legislatures of each of the States have passed Supplements to the Charter of the Canal Company, without a sentence said or written in opposition to the exercise of such privilege, until in the year 1844. And then by process and action of the Legislature of Maryland, to prevent the monopoly which was alleged existed, in consequence of agreement between the different Companies, by which it was said the travelling public were subjected to a high price, for passage between Philadelphia and Baltimore.

As soon as the Canal Company were apprised that there were doubts as to their right of charging toll on passengers, application was made to the Legislature of Maryland for the passage of a law to obviate this difficulty. A law was passed immediately by that Legislature, giving to the Canal Compa-

ny a right to charge certain tolls on passengers. But it was not deemed expedient by the Stock and Loanholders to accept that law, as it in some measure interfered with the Charters of the Company; and further, as the Legislature of Delaware was not expected to meet until after the time (sixty days) limited for the acceptance of the law by a meeting of the Stock and Loanholders of the Company would have expired. Under these circumstances, the Canal Company ceased to demand toll on passengers, until application could be made to the Legislatures of the respective States that had granted their Charters, for a specific right to thus charge toll. At the present session of the Legislature of the State of Delaware, such application was made, and a bill reported granting the desired right. The passage of this bill was openly and strenuously opposed by the officers and agents of the Rail-road Companies above alluded to; and, as it is said and believed, the passage of the material parts of it prevented by the various influences that were thus brought to bear, and the Bill as passed, rendered almost nugatory, so far as respects the principal intention of it. Soon after this disposition of the Bill offered by the Canal Company, a Bill was offered in the same Legislature at the instance of the before mentioned Rail-road Companies, and under the same influences that defeated the important parts of the Canal Company's Bill, that of the Rail-road Companies became a law.

By that law, the faith of the State of Delaware is purported to be pledged, that no future Legislature of that State should pass a law, giving to the Canal Company a right to charge toll on passengers until the year 1856.

It is perhaps unnecessary here, either to descant on the propriety or policy of one or more corporations attempting to buy the privilege of injuring another,—or to make any remarks as to the value of “the considerations” for which the *faith of a State* may be pledged. The copy of the law which is subjoined, will enable each one to form an estimate and opinion for himself on this subject.

The Memorial of the Chesapeake and Delaware Canal Com-

pany, and several remonstrances and other documents, in relation to the passage of these laws, as well as copies of the law proposed by the Canal Company, and defeated, are subjoined, for the purpose of enabling the Stock and Loanholders of the Canal Company and the public generally, to form a correct opinion of the course of proceeding that has been pursued in relation to these matters—as well as to show the grounds on which they have been urged. Among the reasons that have been given to the Legislature why the Canal Company should not have the right or privilege granted to charge toll on passengers, it has been alleged by the Trustees of the Rail-road loan, “That they are equally certain that should the Legislature grant the said privilege for the passenger business, the revenue of the Rail-road Company will be so diminished, that the interest on the said loan can no longer be paid.” This statement of the financial situation of these Companies, emanating as it does, from highly respectable gentlemen, must be considered as strictly correct; and however deplorable may be the anticipated results, it is difficult to imagine how the charge of toll by the Canal Company can have the effect suggested, as it must be obvious to almost every one, that a passenger line, paying no toll on the Canal, could afford to carry passengers by that route at a lower rate than if they were obliged to pay; and consequently, would prove more prejudicial to a rival route by going free of toll than if they had to pay it. As to any compromise between the Rail-road and Canal Companies on the basis of the one taking exclusively the passengers, and the other the freight, as indicated in the recently passed law, there are two difficulties that cannot be readily surmounted. The first, that the Canal Company, from the position and capacity of the Canal, have no doubt of its taking a large proportion of the freighting business in preference to other inland routes to the south: and, secondly, should any compromise of the kind be entered into, the powers and interference of Maryland and Pennsylvania would probably soon be invoked to put an end to the combination. And still further difficulties than those that have been met with might be expected

from States that are known to be opposed to corporate monopolies.

If the passage of the law, prohibiting the Canal Company from charging toll on passengers, could by possibility, in any way, have the effect of preventing passengers from using the Canal, and thus virtually close up a great thoroughfare, for the purpose of forcing travellers on to the Rail-road; although it might help to replenish a treasury, yet money so wrung from the public might make the measure too onerous and intolerable to be long borne with. But this unpleasant issue need not be anticipated, as it is very confidently believed—and that confidence founded on high legal authority—that even if toll cannot now be charged on persons passing through the Canal, they have the perfect right to pass with the permission of the Canal Company: so that the public will still have a choice of routes, and a very low rate of fare, between Philadelphia, Baltimore, and other places, to the south, by steamboats, through the Chesapeake and Delaware Canal. If it be said, that although the transportation of passengers, free of toll, on the Canal, may be highly beneficial to the public, yet, how will the interest of the Canal Company be promoted by it?

The answer is readily given—It is, that transportation lines, carrying passengers free of tolls, will be enabled so to reduce the price of freight on merchandise of every kind, as to induce the shipment of large quantities of it through the Canal, which, but for a cheapening of the cost of transportation, might continue to pass as heretofore, by other channels. And should this expected result be realized, the toll on some articles of merchandise might be increased, without the necessity of any increase in the general charge of freight to the shippers, as the profit on carrying passengers toll free, will enable transporters to pay a higher toll on freight. In addition to this, the Canal Company have a specific right, under their charter, to charge a toll of four dollars on each vessel or boat passing through the Canal. In this way a considerable income will be received, from the many lines of boats that the recent law may invite or induce to use the Canal. It is be-

lieved that the increase of revenue that will be thus derived, will, in some measure, compensate for the loss of toll on passengers, of which the Canal Company may be deprived by the efforts of their competitors—who, however vulnerable themselves, have never yet been assailed by the Canal Company, either by threatened judicial proceedings, or legislative enactments.

In the present position of its affairs, the Stock and Loanholders of the Canal Company have little further to apprehend. But what may be the effect of the operations arising under this new law, on the Rail-road Companies, remains yet to be developed. Should its results prove injurious to these Companies, those interested in them will probably recollect, that this may be but the anticipated recoil of the acts of their own officers and agents.

Published by order of the Board of President and Directors.

February 18th, 1845.

APPENDIX.

Correspondence of the Attorney General of Delaware, with the Chesapeake and Delaware Canal Com- pany.

Wilmington, May 21st, 1844.

TO CALEB NEWBOLD, JR., ESQ.,

President of the Chesapeake and Delaware Canal Co.

Sir,—Complaints have been made to me as the Attorney General of the State of Delaware, that the Corporation of which you are the President, called the Chesapeake and Delaware Canal Company, has usurped powers and franchises not granted to it by the Delaware charter. The charge made against the Corporation is, that it has been for a considerable time past engaged in the business of transporting passengers—sometimes exacting passage money, and sometimes transporting passengers without compensation. You must be aware that it is my duty, as the proper law officer of this State, to see that no Corporation shall usurp powers not granted to it. This duty becomes the more imperative upon me, when I discover that franchises or powers are usurped to the detriment of other Corporations which have paid, and are continually paying, a very important consideration to the State for the grants conferred upon them. If the Chesapeake and Delaware Canal Company shall continue to transport passengers through their Canal between Philadelphia and Baltimore, without the authority of the Legislature of Delaware, after the receipt of this notice, I shall discharge my duty to the State, at the next sessions of its Superior Court, by a motion for leave to file a *quo warranto* against the Corporation; and I shall also give notice to the Governor of this State of the conduct of your Corporation, to the end that he may represent the same to the Legislature, if to him it shall seem fit to do so.

I deem it proper to say to you, that in the construction of the charter of your Corporation, I hold it clear, that all persons necessarily or properly engaged in the navigation of vessels, or the transportation of commodities, goods or produce, paying toll imposed by the charter, have a right to pass the Canal without charge for their passage.

I have the honour to be, sir,

Your most obedient servant,

(Signed)

E. W. GILPIN,
Attorney General of Delaware.

—

*Chesapeake and Delaware Canal Office,
Philadelphia, May 29th, 1844.*

To E. W. GILPIN, Esq.,

Attorney General of Delaware.

Sir,—I have the honour to acknowledge the receipt of your letter of the 21st instant, to which I am instructed by the Board of Directors to reply as follows:—

The directly opposite constructions of the charter of this Company which the authorities of Maryland and Delaware respectively seem disposed to give, on the subject of passengers and passenger tolls, make it agreeable to the Company to obtain a judicial decision on the questions involved, as soon as the State officers may deem it expedient.

The Company are advised by counsel that they have the right to permit persons to pass in boats through the Canal, without charging any toll upon them; and that they are under no obligation to know or to inquire whether such persons are necessarily or properly engaged in the navigation of the boats, or in the transportation of commodities, goods or produce. It is my duty respectfully to state to you, that the Company have permitted, and do now permit persons to pass in boats, without such payment or inquiry, and that it is their intention to continue to do so, until they shall receive judicial instructions to the contrary, or of their own authority shall direct otherwise.

I have the honour to be, sir,

Your obedient servant,

(Signed)

C. NEWBOLD, Jr., *President.*

To the Honourable the Senate and House of Representatives of the State of Delaware, in General Assembly met, the Memorial of the President and Directors of the Chesapeake and Delaware Canal Company respectfully sheweth:—

That since the completion of the Chesapeake and Delaware Canal, in the year one thousand eight hundred and twenty-nine, under the several charters of the States of Maryland, Delaware, and Pennsylvania, the President and Directors of the said Company have, from time to time, afforded important facilities to the travelling public, by the transportation of passengers through the line of their Canal, in boats, vessels, and barges, of private individuals, and other companies.

The communication thus opened, by way of said Canal, between the north and the south, has at all times been cheap and of easy access; giving to the traveller a choice of routes, with an agreeable variety in the mode of travel, whilst his pecuniary interests have been promoted by a fair and generous competition between the said Canal Company and other corporations.

The right of the said Canal Company to transport passengers through their Canal, was, as your Memorialists believe, fairly derived from a just and liberal construction of their corporate powers. It was, moreover, a construction of their charter, *cotemporaneous* with the completion of their Canal; given, too, at a period when no improper motive could have existed, and against which not a breath of complaint was breathed for more than fourteen years. Indeed, for several years it was the only mode of travel across the isthmus of this peninsula, except by the old and now obsolete stage coach, over a rough turnpike road.

The accommodation of the travelling public, by “giving” to the “*inhabitants*,” &c., “an easy communication with, and a cheap conveyance to, the seaports of Maryland, Delaware, and Pennsylvania,” and the promotion of the “agricultural interests” of Maryland, Delaware, and Pennsylvania, are believed to have been the great leading objects of those patriotic States, in authorizing “the cutting of said Canal, and perfecting the navigation thereof.” And by the Legislatures of Maryland and Pennsylvania it was held, as early as 1812–13, that “during the time of war against the United States of America, the completion of the work of the Chesapeake

and Delaware Canal would be greatly beneficial to the United States, by forming the great link of an inland navigation of six or seven hundred miles, and thereby establish a perfectly safe, easy, and rapid transportation of our armies, and the munitions of war, through the interior of the country."

So important was "the cutting and perfecting said Canal" deemed by the Commonwealth of Pennsylvania to her agricultural interests, and for the accommodation of her "inhabitants residing on or near the Susquehanna," that to encourage and promote a work so desirable, the Legislature of that Commonwealth, by the Act of February the 19th, 1801, declared the said river Susquehanna, "down to the Maryland line, a public highway." And the three States aforesaid severally authorized large subscriptions to the stock of the said Canal Company.

The United States, also, regarding the completion of the said Canal as an important national work, by the Act of Congress of 2d of March, 1829, authorized the subscription to the stock of said Company, of seven hundred and fifty shares, equal to one hundred and fifty thousand dollars.

The Legislatures of Maryland and Delaware, by their respective acts incorporating the said Canal Company, enacted, "That the said Canal, and the works to be erected thereon, &c., when completed, shall forever thereafter be esteemed and taken to be *navigable as a public highway*."

Your Memorialists further respectfully represent, that although the rates of tolls upon all goods, wares, merchandise, and other commodities, have been ascertained and established by the charter of the said Canal Company, yet no specific rate of toll has been designated therein, for the transportation of passengers; in consequence of which omission, doubts have been recently entertained by some, whether the said Canal Company can lawfully charge toll on passengers going through, and using the waters of the said Canal.

Your Memorialists, however, believing that "every right has its incident," and that they not only had the *right*, but were bound, in consideration of their said Canal being "a public highway," to accommodate passengers, as well as the owners of goods, wares and merchandises, have heretofore, and until within a few months past, assessed and collected, at different times, reasonable rates of fare, or tolls, on the transit of passengers through their said Canal.

Your Memorialists believe they were authorized to do so, by a fair construction of their corporate powers and franchises. Nor have your Memorialists been singular in this construction. It is a construction which has heretofore been acquiesced in by the public. And the President and Directors of the Philadelphia, Wilmington and Baltimore Rail-road Company, and of the New Castle and French Town Turnpike and Rail-road Company, Corporations that have a direct and an immediate interest in this question of transportation of passengers, and of the rates of fare, or tolls therefor, have, by a solemn corporate act of their Companies, recognised the right of your Memorialists to charge toll for passengers going through their Canal.

On the seventeenth day of July, in the year 1843, Messrs. M. Brooke Buckley, A. J. Lewis, and C. H. Fisher, a Committee on behalf of the said Rail-road Companies, addressed a letter to Messrs. Henry Cope, G. Scull, and A. S. Roberts, a Committee of the said Canal Company, of which the following is a copy:—

“The undersigned, a Committee of the Philadelphia, Wilmington and Baltimore Rail-road Company, and the New Castle and French Town Turnpike and Rail-road Company, in behalf of said Companies, will agree to charge fifty cents per hundred pounds upon all merchandise passing on their works, and boats to and from Baltimore to Philadelphia, and pro rata upon the same for shorter distances, with the exception of live stock and marketing:—Provided, that the Chesapeake and Delaware Canal Company will charge a toll on all passengers passing through their Canal to and from Philadelphia and Baltimore, equal to one-half of the charge that shall be made by the New Castle and French Town Turnpike and Rail-road Company, provided the charge for the transportation of passengers by that route shall not exceed the charge by the Philadelphia, Wilmington and Baltimore Rail-road Company, either by the road, or by the road and steam-boats; and provided also, that on way-passengers to and from any point along the line of the Canal, between Delaware and Chesapeake cities, there shall be charged one-half of the above stipulated rates of toll,” &c.

The proposition thus made by the said Rail-road Companies, and submitted to the said Committee of the said Canal Company, was finally accepted; and the same became, and for some time remained

as a subsisting agreement between the said Canal Company and the said Rail-road Companies.

Your Memorialists further respectfully represent, that Edward W. Gilpin, Esq., Attorney General of the State of Delaware, addressed a communication to Caleb Newbold, Jr., President of the said Canal Company, under date of May 21st, 1844, of which the following is a copy, to wit:—

“Sir,—Complaints have been made to me as the Attorney General of the State of Delaware, that the Corporation of which you are the President, called the Chesapeake and Delaware Canal Company, has usurped powers and franchises not granted to it by the Delaware charter. The charge made against the Corporation is, that it has been for a considerable time past engaged in the business of transporting passengers, sometimes exacting passage money, and sometimes transporting passengers without compensation. You must be aware, that it is my duty, as the proper law officer of this State, to see that no Corporation shall usurp powers not granted to it. This duty becomes the more imperative upon me, when I discover that franchises or powers are usurped to the detriment of other Corporations which have paid, and are continually paying, a very important consideration to the State for the grants conferred upon them. If the Chesapeake and Delaware Canal Company shall continue to transport passengers through their Canal between Philadelphia and Baltimore, without the authority of the Legislature of Delaware, after the receipt of this notice, I shall discharge my duty to the State, at the next sessions of its Superior Court, by a motion for leave to file a *quo warranto* against the Corporation; and I shall also give notice to the Governor of this State, of the conduct of your Corporation, to the end that he may represent the same to the Legislature, if to him it shall seem fit to do so,” &c.

Your Memorialists beg leave further respectfully to represent, that your Memorialists, not wishing to exercise even a doubtful right, without acknowledged lawful authority, much less to usurp a franchise not warranted by their charter, have ceased to charge tolls on passengers; and that they also addressed a communication to his Excellency the Governor of the State of Delaware, on the 25th day of March, 1844, last, respectfully requesting him to convene a special session of the General Assembly of this State, for the purpose of enabling your Memorialists to prefer a petition to the honourable the General Assembly, for a Supplement to their Act of Incorpora-

tion, authorizing the said Canal Company to charge a reasonable toll on passengers, &c. His Excellency, the Governor, declined to call a special session of the Legislature, on the ground that such an "extraordinary occasion" as was contemplated by the Constitution, and in view of which alone he was authorized to exercise that constitutional power, did not exist.

Your Memorialists also further respectfully represent, that the General Assembly of Maryland, at their last annual session, passed an Act, entitled "A further Supplement to an Act, entitled 'An Act to incorporate a Company for the purpose of cutting and making a Canal between the River Delaware and the Chesapeake Bay,'" in and by which "further supplement," the said General Assembly of Maryland authorized the said Canal Company, upon the acceptance of the said Supplement, &c., "to charge for and in respect of each and every passenger conveyed through said Canal, in any kind of vessel, whether owned by said Company or by any other proprietor or proprietors, a toll of twenty-five cents, in lieu of four dollars now allowed on boats not having commodities on board; provided that the maximum charge for children under twelve years of age, shall not be more than half that sum," &c.; which supplement, in consequence of the conflict in which it involved your Memorialists with the other parties to the Charter, and especially with the State of Delaware, whose Legislature was not in session, your Memorialists were unable to accept, and so made known to the Secretary of State for the State of Maryland. Copies of all which said several letters, communications, and Acts of Assembly, your Memorialists respectfully ask leave to present herewith, to the consideration of the Honourable the General Assembly of Delaware.

And your Memorialists further respectfully represent, that the said Chesapeake and Delaware Canal has become an important communication for the conveyance of passengers, as well as goods, wares, and merchandise, between different parts of this State and Union; and in which the State of Delaware, and other States of the Union are deeply interested. Your Memorialists would also respectfully submit, that to prevent the establishment and exercise of an oppressive, unjust, and odious monopoly, it is highly important for the Legislature of Delaware to provide by law, not only that the said Canal Company *may* transport passengers through their Canal, and charge a reasonable rate of toll for the same; but that the said Canal Company *shall*, in all time to come, permit and allow the transpor-

tation of passengers through their Canal, in every description of vessel, capable of navigating the same, and complying with existing laws, and legal regulations.

The exclusion of passengers from the benefits of the said Canal, would be deemed a very inexpedient measure, whether enforced by the Company, or required by the States which have joined in granting the Charter, and would be in opposition to the principles which have been universally applied to the intercourse between the inhabitants of a State, and the citizens of different States.

Your Memorialists further respectfully submit, that it would be manifestly unjust to the Company, whether as matter of practice or of law, that passengers should pass through the locks, and upon the said Canal, without remunerating the said Company, in a proper manner, for the expense of making and maintaining said locks and Canal in repair.

That from the threats which have been thrown out, and from present appearances, the said Company would, by assessing and demanding any toll upon passengers, however reasonable and moderate, be exposed to complaints and controversies, from which the good of the State, as well as the interests of the Company and of passengers, make it reasonable and just that they should be exempt. And that the repeated attacks which have been made upon the said Canal Company have had, and unless prevented by sound legislative provision and protection to so important a work to the nation, must continue to have an injurious effect upon the stock of the said Canal Company; and upon the stock market generally, by creating panics which are intended to advance the interest of one class of Stockholders over the interests of another class.

Wherefore, in consideration of the premises, your Memorialists do hereby most respectfully pray your Honourable Bodies to pass an additional Supplement to their Charter, authorizing and prescribing such passengers' tolls, as to your Honourable Bodies may appear expedient.

And as in duty bound, your Memorialists will ever pray, &c.

By order of the Board of Directors,

C. NEWBOLD, Jr. *President.*

Attest,

PETER LESLEY, *Sec'ry.*

January 4, A. D. 1845.

The Preamble and the First and Second Sections of this Bill were stricken out, and the Third, Fourth and Fifth Sections were retained, and passed into a Law.

A Further Supplement to the Act, entitled "An Act to Incorporate a Company for the purpose of Cutting and Making a Canal between the Chesapeake Bay, and Bay or River Delaware or the Waters thereof."

Whereas, it is important to the people of the State of Delaware as well as to the public at large, that various communications between all parts of the Union should be multiplied for travellers, as well as merchandise, under such regulations as will prevent monopoly, and at the same time give a fair remuneration to such as expend their capital in opening and maintaining the same:—And whereas, some doubts are entertained whether the Chesapeake and Delaware Canal Company have the right under their charter to charge tolls on passengers, and it is both just to the said Company and expedient to the State of Delaware and the public at large, that tolls should be prescribed and limited, so as to prevent all uncertainty in regard to the same: Therefore,

SECT. 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That it shall and may be lawful for the said Chesapeake and Delaware Canal Company to demand and receive as toll, in respect of each and every passenger carried through said Canal, in boats or vessels owned by any individual or individuals, bodies corporate or otherwise, a sum not exceeding fifty cents, and for children between the ages of three and twelve years, one-half of the above sum: *Provided*, That passengers shall, at all times hereafter, have the right to travel through said Canal in such manner as the existing regulations of said Company may require: *And provided further*, that each and every passenger shall be entitled to carry fifty pounds of baggage free from any charge for toll.

SECT. 2. *And be it further enacted*, That in case the Philadelphia, Wilmington and Baltimore Rail-road Company should not be able to pay to the State of Delaware the interest accruing on eighty thousand seven hundred and ninety-three dollars and eighty-three cents, the loan made by the State to the said Company, amounting to four thousand eight hundred and forty-seven dollars and sixty-two cents

per annum, or should neglect, or fail to pay the said interest for the space of thirty days after the same shall from time to time fall due, then, and in that case, the said Chesapeake and Delaware Canal Company shall stand pledged and bound to pay the said interest to the State, and the said Canal Company shall have the right to sue for, and recover the said interest which may be so paid by them from the said Rail-road Company, in the same manner in which it can be recovered by the State. And the said Chesapeake and Delaware Canal Company shall also have the right and power, and it is hereby authorized at its option, at any time before the said principal sum of eighty thousand seven hundred and ninety-three dollars and eighty-three cents shall become due and payable by the terms of the said mortgage, to purchase and hold the same or any part thereof at par, with all the privileges, rights and appurtenances thereunto belonging, which the State of Delaware has or may or can have in reference to the same, or so much thereof as may be so purchased, and the State Treasurer for the time being is hereby authorized and required, upon such purchase, to transfer to the said Chesapeake and Delaware Canal Company the said principal debt, or such part thereof as may be so as aforesaid purchased, and receive the money for the same.

SECT. 3. *And be it further enacted*, That the general meetings of the proprietors of the said Canal Company shall, in future, be held on the first Monday of January, instead of the first Monday of June in every year, as is provided in the seventh section of the original act of incorporation of said Company, and at the said meetings on the first Monday of January, the proceedings and business of the said proprietors, and of the said president and directors, shall be conducted as already provided for in the said seventh section.

SECT. 4. *And be it further enacted*, That the shares of stock of said Company may be transferable in whole, or in part, by the said proprietors thereof, in person or by attorney, duly constituted, upon the books of the said Company, in the presence of its president or secretary; and upon the surrender of the old certificates, new ones in lieu thereof, to the proper amount, shall be issued, in the same manner as is now by law authorized and provided in cases of the loans of the said Company.

SECT. 5. *And be it further enacted*, That when and as soon as the said Company shall signify to the Secretary of State in writing, under the corporate seal, their acceptance of this supplemental act, the same shall become a part of their charter, but otherwise they

shall not be entitled to the privileges it confers, and that a resolution of the board of president and directors of the said Company, made by authority of said Company, at a meeting to be called for that purpose, being signed by the president, and attested by the secretary of the said board, and signified as aforesaid, shall be deemed an acceptance of this act.



To the Honourable the Senate and House of Representatives of the State of Delaware, in General Assembly met,—the Remonstrance of the Stockholders of the Philadelphia, Wilmington and Baltimore Rail-road Company, by their President and Directors, respectfully represents:—

That your Memorialists have heard that it is contemplated by the Chesapeake and Delaware Canal Company to apply to your honourable bodies, at your present session, for an alteration of their Charter, and such an alteration too, as will authorize the said Canal Company to charge toll on passengers who shall be transported through said Canal.

Against the passage of such a law we respectfully remonstrate, as unjust to the public, and not only injurious to these Remonstrants, but a substantial violation of that good faith, which has been heretofore solemnly pledged to these Remonstrants, and those with whom they have been connected, under the authority, and by the direction of the State of Delaware.

They also respectfully remonstrate against it, as a measure deeply and injuriously affecting the interests of the State of Delaware, and its citizens.

Your Remonstrants have expended an immense sum of money in the construction and cost of their Rail-road, and its necessary appurtenances. The sum expended by them for these purposes amounted on the 31st of December, 1843, to \$4,664,009.57; their capital stock paid in is \$2,806,400; the amount of their permanent loans, including the loan of the State of Delaware, is \$2,896,574.16; and the amount of their other liabilities, on the 31st day of December aforesaid, was \$299,594.67. Making the whole amount of stock and debts of their Company \$6,002,541.83.

The revenue of their Company (including that of the New Castle

and Frenchtown Company) for the year 1843, was \$430,434.47; and their expenses for the same year were \$230,304.86. So that the nett income of both Companies for that year was about \$200,000. The nett income of both Companies for the year 1844, will not exceed the sum of \$210,000. A sum barely sufficient to cover the interest on their debts, and not affording the means either for the extinguishment of any of their floating debt, any application to the sinking fund provided for in their mortgage to the Loanholders, or leave any surplus for the Shareholders.

It is apparent, therefore, that these Remonstrants have expended for the benefit of the public, the sum of \$2,806,400 of capital out of their own pockets; from which they cannot expect to receive any remuneration whatever for many years to come, and from which they have not received one dollar of interest or dividend for the last three and a half years. By their investment in this Rail-road they have provided the public with a safe, expeditious, and convenient mode of travel during the whole year, for a distance of more than ninety-six miles, between the cities of Philadelphia and Baltimore, for less than half the expense formerly charged for travelling between the two cities; and they carry the passengers through in less than half the time. Thus far the public has received nearly all the advantages of the outlay of money made by your Remonstrants; and it is perfectly certain that the public will continue to receive all the advantage of that outlay for many years to come. Your Remonstrants are incumbered with an enormous debt, amounting to more than three millions of dollars, necessarily incurred in making the Rail-road, and in keeping it up; all of which has to be paid, before your Remonstrants can receive any return for the millions of dollars which they have paid out of their own pockets, in filling the capital stock of the Company.

Many of the original subscribers have died, and a large amount of their capital stock is now in the hands of widows and children, who are looking to the future for some remuneration from the large sums which have been expended in this work.

The Wilmington and the New Castle Rail-road Companies expend in the State of Delaware every year more than \$100,000, two-thirds of which is paid to mechanics and labourers in the State. This important fact these Remonstrants are ready to demonstrate. They pay, annually, to the State, a tax of 4000 dollars, including the

interest on the Chesapeake and Delaware Canal stock, formerly held by the State; and they also pay to the State the interest on the State loan to the Philadelphia, Wilmington and Baltimore Rail-road Company, which interest amounts to the sum of \$4847.62. They thus pay annually to the State, a sum of money amounting to nearly \$9000. And they have paid that sum annually for many years past. If their business be not broken up or impaired by hostile legislation, it is quite certain they will continue to pay it, as they have hitherto done, punctually and faithfully, to the State, which conferred upon them the right to charge toll on passengers.

No such right as that of charging for passengers was ever conferred upon the Chesapeake and Delaware Canal Company. The object of constructing the Canal was to carry freight; and the privilege of charging for that, granted by the State to the Canal Company, without conferring upon them any power to interfere with others in the transportation of passengers. The Canal Company never paid the State one dollar, either by way of tax or bonus, in return for all the important privileges which have been granted to it.

These Remonstrants do not complain, however, that the Canal Company has not been taxed by the State, although the State has seen proper to tax the Rail-roads, as they have stated. Nor do these Remonstrants ask the Legislature to diminish or alleviate their own burthens, or to impose burthens upon others. All they ask is, that they should be left as they are, and the Canal as it is. We ask for no new grants, no new privileges. We shall never ask the public to reimburse us the heavy losses we have sustained for their benefit; let the Canal Company and the Rail-road Companies abide by their respective Charters. Our business, that of transporting passengers, has hitherto been unfortunate for us; and, should it in future become profitable, we respectfully submit to your honourable bodies, that it is inequitable and unfair to defeat the just expectations held out to us by our Charter, by now transferring a portion of our business to others. We accepted our Charter and built our Road, knowing that the Canal Company had no power to charge any toll or tax upon passengers; and we respectfully suggest that a law authorizing them to tax the travelling community, who may pass through their Canal, would be to impose a new burthen upon the public, as well as to confer a most important privilege upon the Canal Company, which, in its effects, cannot but be injurious both to the Rail-

road Companies, which have paid a valuable consideration for that very privilege, and to the State of Delaware itself.

These Remonstrants do therefore earnestly, but most respectfully, pray that no law may be passed, altering the Charter of the Chesapeake and Delaware Canal Company, so as to give that Company the power of imposing any new taxes or burthens on the public. And they will ever pray, &c.

By order of the Board of Directors,

M. BROOKE BUCKLEY, *President.*

To the Honourable the Senate and House of Representatives of the State of Delaware, in General Assembly met, the New Castle and French Town Turnpike and Rail-road Company respectfully represent:—

That they have been informed, that the Chesapeake and Delaware Canal Company have applied to your honourable bodies, for the grant of new and important rights and powers not granted by their original Charter, namely, the power to charge passengers with toll, for passage through their Canal, and other rights connected with the exercise of such power.

Your Memorialists respectfully remonstrate against any such grant of additional powers to the said Canal Company, and against the passage of any law which can authorize the said Canal Company to impose new burthens on the travelling community, or materially affect the rights and interests of your Memorialists.

Your Memorialists have expended in the construction of their Rail-road, in the erection of wharves and buildings, in the purchase of steam-boats, locomotive engines, cars, and in incidental expenses connected with said Rail-road, a sum of money, which, including the capital stock actually paid in, and the loans of said Company, amounts to about nine hundred thousand dollars; all which has been expended on a great public work, which has eminently contributed to the convenience and advantage of the community, and to the prosperity of a considerable part of the State.

This large expenditure has been made in consequence of the perfect confidence which your Memorialists have ever had in the good

faith of the State of Delaware. The Legislature of Delaware granted to your Memorialists the right to carry passengers for toll from New Castle to the Maryland line; for which grant a tax was laid upon your Memorialists, and has been annually collected for many years past; and on account of that tax alone, your Memorialists have actually paid into the treasury of the State, during the eleven and an half years ending on the 19th of July last, the sum of seventeen thousand two hundred and fifty dollars. On the 22d day of January, 1833, a law was passed by the Legislature of the State of Delaware, providing that it should “not be lawful for any other person or persons, body politic or corporate, to construct any other rail-way, or road to be used or travelled by locomotive engines, or engines propelled by steam, within New Castle county, between the waters of the Appoquinimink creek and those of the Christiana river, or within a distance from the New Castle and French Town Rail-road on each side thereof, as great as the mouth of said Appoquinimink creek and of said Christiana river is from said Rail-road, at the town of New Castle; *saving, nevertheless*, the rights and privileges heretofore granted to ‘The Wilmington and Susquehanna Rail-road Company,’ in the location of their road from the city of Wilmington to the Susquehanna river.” The act from which this extract is made, expressly declares, that this provision for the benefit of the Rail-road Company was made by the Legislature “*in consideration*” of the Company’s agreement to receive, at its par value, a transfer of the stock then owned by the State of Delaware in the Chesapeake and Delaware Canal Company, and to pay to the State an interest of six per cent. per annum on the amount of the said stock, which was twenty-five thousand dollars; or if the rate of dividend on the capital stock of the said Rail-road Company should exceed six per centum per annum, then at the rate of such dividend on the par value of the said stock, such interest to be paid semi-annually; and also “*in consideration*” of the agreement of the said Rail-road Company to surrender to the State all the rights of the said Company in and to the turnpike-road leading from Clark’s Corner to the Delaware line, in the direction towards French Town. It thus appears that the State intended to grant to your Memorialists the right to convey passengers between the waters of the Appoquinimink and the Christiana, with the exception only in favour of the Wilmington and Susquehanna Rail-road Company; and thus your

Memorialists agreed to pay to the State a full and valuable consideration for the grant so intended to be made to them. The twenty-five thousand dollars of Chesapeake and Delaware Canal stock was then, and is now, held to be intrinsically of no value. The State had sunk that twenty-five thousand dollars in the investment made by a former Legislature in the stock of this very Chesapeake and Delaware Canal Company. That Canal Company has never paid the State one cent of either bonus or tax, for all the highly important privileges which the State conferred upon it. The Rail-road Company, though required to pay annually a tax, as before stated, was thus made to assume the whole amount of the loss incurred by the State, by its investment in the unprofitable stock of the said Canal Company. And now your Memorialists beg leave respectfully to represent, that they have complied with their part of the contract with the Legislature to the very letter. They have paid into the treasury of the State, since the law referred to was passed, not only six per cent., in semi-annual payments, on the whole sum of twenty-five thousand dollars, but dividends on that sum as so much stock; which, during the last eleven and an half years ending in July last, amounted, with the interest aforesaid, to the sum of twenty-five thousand dollars, equal to the whole amount of the sum invested by the State in the said Chesapeake and Delaware Canal Company; so that your Memorialists have paid into the treasury of the State (for the Legislative grants made or intended to be made to them), under the name of taxes, interest and dividends, the full sum of forty-two thousand two hundred and fifty dollars, in a period of eleven and an half years; which, with the tax and interest due the first day of this present month of January, which your Memorialists are ready to pay when drawn for by the State Treasurer, will amount to the sum of forty-three thousand seven hundred and fifty dollars. They have also surrendered to the State all the turnpike road required of them in the law, and made the said turnpike road toll free for the public forever, although they were obliged to and did receive and include in their capital, the stock of the said two turnpike companies, at their par value. Having thus fully complied with their contract, solemnly entered into with the State, they respectfully but anxiously remonstrate against any attempt to break the faith of the State as pledged to them, either in the spirit or the letter of that contract.

At the time of this contract with the State, neither party contemplated the possibility of navigating the Canal with steamboats propelled upon a principle not then discovered.

The object of the law unquestionably was to give to your Memorialists the exclusive right of carrying passengers by steam power on any line across the peninsula, between the Appoquinimink and the Christiana, as before stated; and your Memorialists have too much confidence in the honour, the integrity, and the sense of justice, of the Legislature of the State of Delaware, to imagine that it will ever consent to violate the spirit of that contract as it was honourably understood by both parties at the time it was made. If it be contended by any one that, by now granting the prayer of the Canal Company, the Legislature keeps its word of promise to the ear, our answer is, that it breaks it to the hope; and that it is one of the leading principles in the construction of every contract, that it shall be interpreted against each party to mean just what he understood was the real intent and meaning, not of himself merely, but of the other contracting party at the time of entering into the agreement. The question arises, then, what did the Legislature of 1833 understand, at that day, to be the real object of your Memorialists, and what was the understanding of both parties at that time? Can any one believe that your Memorialists would have made such concessions, and assumed such heavy responsibilities as your Memorialists have stated, for the exclusive right to carry passengers by steam between the Appoquinimink and the Christiana for a less term than was granted?

The Legislature of the State of Delaware has, in all time past, been true to its own honour and good faith; and we are persuaded that it will ever remain so. It has carried out its contracts, not merely according to the letter, but according to the spirit and the intent with which it entered into them. Its respect for vested rights and interests arising under its own grants, is well known to your Memorialists. At the time this Rail-road Company sought from it a charter conferring the privilege of transporting passengers, your Memorialists were required to receive, at its par value, the stock of the turnpike companies aforesaid, although at that time of no value, which, in fact, amounted to a full indemnity to the stockholders of said turnpike companies; and now we respectfully submit, upon what principle the Chesapeake and Delaware Canal Company can

expect from the Legislature a similar grant to them, without a similar indemnity?

The State of Delaware is deeply interested not to destroy or impair the rights which they have granted to us. A large portion of our stock, as well as the stock and road of the Philadelphia, Wilmington and Baltimore Rail-road Company, are in effect mortgaged to the State for the repayment of a heavy loan made to the latter, amounting to more than eighty thousand dollars. The power asked for by the Canal Company might essentially impair the value of that loan; and by crippling the Rail-road Companies, might also jeopard the large revenue now regularly paid by them to the State, in the shape of taxes and interest. The object of making the Canal was not to carry passengers, but goods, wares and merchandise; while the great intent for which the Rail-roads were constructed, was to carry passengers. It is conceded on all sides, that the Chesapeake and Delaware Canal Company have no power to charge toll for passengers, and that no such power was given or expressed in their charter.

Your Memorialists, therefore, most respectfully pray, that no action may be taken by the Legislature, impairing the value of the contract of the State of Delaware with the New Castle and French Town Turnpike and Rail-road Company, thereby depriving the said Company of the means relied on by them for their faithful performance of the said contract; and that no law be passed, granting to the said Chesapeake and Delaware Canal Company the power to charge toll on passengers.

And your Memorialists will ever pray, &c.



To the Honourable the Senate and House of Representatives of the State of Delaware in General Assembly met:—The Chesapeake and Delaware Canal Company respectfully represents:—

That a Memorial of the president and directors of the aforesaid Company has been presented to your honourable bodies at the present session, praying that a further supplement to the act entitled “An act to incorporate a Company for the purpose of making and cutting a Canal between the Chesapeake bay and bay or river Dela-

ware, or the waters thereof," may be passed by your honourable bodies, for the purpose of authorizing said Company to charge and collect a toll from passengers passing through their said Canal. That your Memorialists, confiding in the justice and equity of their claim, thus presented to the General Assembly, have entertained no doubt that their application would be favourably considered and acted on by your honourable bodies. If the travelling portion of the community have the right to pass through their Canal, and use the waters thereof, it is but mere justice, that your Memorialists should have some compensation from the passengers who enjoy said right, and hoped that no opposition would be offered to their application from any quarter.

Your Memorialists have, however, been disappointed in this reasonable expectation, and have read with regret the several remonstrances of the Philadelphia, Wilmington and Baltimore Rail-road Company, and the New Castle and Frenchtown Turnpike and Rail-road Company, against the passage of said further supplement. It is alleged by the said Companies, that the passage of said Supplement will impose new and additional burthens on the travelling community, and materially affect the rights and interests of the said Companies. In reply to these allegations, your Memorialists would respectfully state, that they are at a loss to conceive how, or in what manner, their rights to charge and collect toll from passengers can injuriously affect the interests of said Companies. Can the exercise of a right to impose and collect a toll from passengers, have the effect to induce passengers to select the route by the Canal, in preference to the routes by the Rail-roads, when these same passengers, in the absence of such supplementary law, can now go and will continue to go through the Canal free of charge or toll? Will the imposition of a toll on passengers, who can now travel through the Canal free of such charge, be an additional reason for their selecting said route? The statement of these questions involves the answers to them. They are too plain to admit of debate. If the passage of the law cannot have the effect to draw away passengers from the Rail-roads, how then can it injure said Companies?

It is further alleged in these remonstrances, that the said Rail-road Companies asked for and accepted their several Charters, knowing that the Canal Company had no right to charge toll upon passengers, and that for this reason it would be unjust, and an act of

bad faith on the part of the State, now to give the Canal Company the right to charge toll on passengers. Your Memorialists beg leave most respectfully to say to these objections, that they have yet to learn that the State of Delaware has placed itself under any obligations, express or implied, to give these Rail-road Companies an immunity from competition in the business of carrying passengers by land or by water. The said Companies have voluntarily subjected themselves to the payment of considerable sums of money to the State, for the purchase of important privileges and franchises, which have been conferred on them since the original grants of their respective Charters. The Canal Company does not wish to interfere, nor does it ask to be allowed to interfere with or abridge any of those privileges; the Rail-road Companies have paid for them, and your Memorialists are willing that they should enjoy them. But in what parts of the Rail-road Charters or of the Supplements thereto, has the State of Delaware bound or obligated itself in any way, not to grant to the Canal Company the right to charge toll on passengers using their Canal; it is most confidently affirmed by your Memorialists that no such obligation, express or implied, exists; it is further most positively denied, that the Rail-road Companies in accepting their Charters, accepted them under the impression and belief, that the Canal Company had no right to take toll on passengers. The fact is notorious that the Canal Company's waters, since its completion in 1829, have been used for the purpose of transporting passengers, and that said Company, believing it had the right, charged and continued until the month of May, 1844, to charge toll for passengers. All this must have been known to these Companies at the time their Charters were originally granted to them, and at the times the several Supplements thereto were subsequently granted. These facts were not only known to these Companies during all this interval of time, but your Memorialists further say, that both of the said Rail-road Companies have not only repeatedly recognised the right of the Canal Company to charge toll on passengers, by their contracts solemnly admitting such right, but one of them has actually paid the Canal Company large sums of money for toll on passengers. How then can these Companies say, that they accepted their Charters under the impression that the Canal Company could not charge toll. If, then, the said Companies accepted their Charters, knowing at the time that the Canal was used for the transportation

of passengers, and believing that the Canal Company had the right to charge toll, how are their rights and privileges invaded or violated? How is the situation in which they voluntarily placed themselves, by accepting their several acts of incorporation, changed or affected by your honourable bodies now, when it is but lately ascertained that the Canal Company has no right to charge toll, granting to said Company such right?

And lastly, it is objected, that the grant to the Canal Company of the right to charge toll on passengers, will jeopard the interests of the State as regards the payment of the interest semi-annually falling due on its loan of eighty thousand seven hundred and ninety-three dollars and eighty-three cents to the Philadelphia, Wilmington and Baltimore Rail-road Company. Your Memorialists would most respectfully ask, whether the said Company can now, consistently with good faith and fair dealing, make such representations. At the session of the General Assembly held in January and February, 1843, did not this Company ask that honourable body to extend the time of payment of said loan to the first of April, 1856, and induce the Legislature at said session to believe that not only it would have the ability to pay said loan at that period, and in the mean time, that the semi-annual payments of interest would be at all times punctually made, as they should become due? If the directors of that Company then thought, as they no doubt did think, that the Company would be able to fulfil its obligations to the State in this behalf, how can the grant of the right to collect toll from passengers on the Canal affect their opinion of that ability? In January, 1843, and prior to that time, an opposition passenger line was running on the Canal, and the Canal Company was receiving toll from the passengers; it was under these circumstances, that the Rail-road Company assured the Legislature that it would be able to pay its interest to the State. How then can it now be alleged that the passage of this act will impair the ability of the Company to punctually pay this interest? It is confidently believed by your Memorialists, that the grant of this right can have no such effect; and as a test of the sincerity of their belief, they do hereby pledge themselves, that the said Canal Company, in case your honourable bodies shall see fit to grant it the right to charge toll on passengers passing through their Canal, that the said Canal Company will guarantee the punctual payment of said interest to the State.

Your Memorialists beg leave in conclusion to say, that they wish not to interfere with any of the chartered rights or privileges of the Rail-road Companies; they do not ask, they would not dare to ask the State of Delaware to violate its faith or to do injustice to any man or company of men. They do, however, relying on the well known liberality which has marked, and the enlightened policy which has ever distinguished the acts of the Legislature of Delaware, in accordance with the recommendation of his Excellency the Governor, in his last message to your honourable bodies, most confidently hope and expect that your honourable bodies will grant your Memorialists the simple justice which is prayed for in the petition above referred to.

The Chesapeake and Delaware Canal Company, by its President,
C. NEWBOLD, Jr.

Dover, January 15, 1845.

Memorial of the Philadelphia, Wilmington and Baltimore Rail-road Company, in reply to the Counter Memorial of the Chesapeake and Delaware Canal Company. To the Honourable the Senate and House of Representatives of the State of Delaware in General Assembly met:—The Memorial of the undersigned President of the Philadelphia, Wilmington and Baltimore Rail-road Company respectfully represents:—

That your Memorialist has seen, with great surprise and regret, a Memorial presented to your honourable body by the Chesapeake and Delaware Canal Company, which, among other things, under the pretext of testing the sincerity of an opinion heretofore expressed in the Memorials of the Rail-road Companies of this State, that the passage of a law granting the right of toll on passengers to the Canal Company would endanger or destroy the value of the loan made by this State to the Philadelphia, Wilmington and Baltimore Rail-road Company, offers to the State a guaranty of the payment of the interest on that loan as a douceur or reward to the State for destroying the property of the other Loanholders, as well as that of all the Stockholders of said Rail-road Company.

That the passage of such a law as is asked by the Canal Com-

pany would destroy the property of those over whose interest it is the pleasure and duty of your Memorialist to preside, will be apparent to the most common mind, notwithstanding the specious interrogatories with which this most objectionable memorial of the Canal Company is replete. The question, how the grant to the Canal Company of twenty-five cents for every passenger whom they can persuade to leave the Rail-road and travel on the Canal, will injure the Rail-road, is answered at once by every man. Every citizen may lawfully enter your Statehouse; but if you will offer the door-keeper twenty-five cents per head for every man, woman and child whom he and his assistants can persuade to enter it, we shall soon see the house filled. Argument on such a subject I deem to be unnecessary.

In order, however, that the Legislature may thoroughly understand the position they are placed in, I herewith submit a Memorial, which has been committed to my care, signed by the Trustees appointed and designated in the mortgage deed of May 21st, 1842, to superintend and protect the interest of this State, as well as that of other creditors in that mortgage. If the Legislature will not rely on the opinion of those whom a former Legislature has specially constituted as the guardians of the State's money, your Memorialist has nothing further to offer to prove to you that you are asked to destroy your own property by your own act. But your Memorialist would most respectfully submit, that the duty of taking care of the State's financial interests is not the only, nor even the paramount duty due from the Legislature to the people and the country. Admitting that this Canal Company, which is a notoriously insolvent corporation, owing a large debt, believed to be some millions of dollars, upon which it is utterly unable to pay a dollar of interest, can, in fact, satisfactorily guarantee the payment of the interest due from others, still the question arises, Is it not due from the State to the other Loanholders, who have consented to share a common fate in the same mortgage with the State, that the Legislature should commit no act to destroy them merely to save itself? By the grant of a new right of toll on passengers to the Canal Company, you destroy the property of men who have lent millions of dollars to construct these Rail-roads. Among these men are many of your own citizens, who have invested hundreds of thousands of dollars in the loans and stock of the two Rail-roads, and who are annually paying a tax to,

and assisting in support of the government of the State of Delaware. Among the Loanholders, secured by the same mortgage in which the State is interested, are many minors and orphans, whose guardians and trustees have invested tens of thousands of dollars in these loans within the last two years, impelled, and that too powerfully, by the consideration that the Legislature of the State at its last session, invested the public money in this loan by the *unanimous* vote of both houses, and at the same time *unanimously* adopted and published a Report, which was spread among the people, declaring the Rail-road Loan to be safe beyond all question. I say and I know, that, upon this unanimous declaration of the Legislature of Delaware, at its last session, thousands and tens of thousands of dollars have been invested by executors and administrators, guardians and trustees, often, too, under the authority of courts of justice, in these loans of the Rail-road Company. And now, how does it become another Legislature of the same State to destroy the value of those investments under pretext, or for the sake of securing the State's own debt. In a shipwreck at sea, if there be two men upon a plank, which is unable to bear them both, one is held justifiable in pushing the other off, in order to save himself; but he who throws another overboard out of a boat in which both are safe, is guilty of the deepest crime, from the consequences of which no pretence of destroying another for increased security for himself could possibly avail him. Were the trustees in this mortgage, being Loanholders themselves, to release the whole mortgage, or to do any other act to destroy or even impair the value of the millions entrusted to their charge, merely because the Canal Company should guarantee the interest on their individual loans, they could never again assume their high position in society, but would for ever after be held and considered as dishonoured gentlemen. Were one of several plaintiffs in a judgment to give a receipt for the whole debt upon receiving only his aliquot part, or make any statement, or do any other act of which the defendant in that judgment could avail himself to set that judgment aside, or to diminish its security, how could he protect himself from the odium of such an act, by showing that he had received his rateable share of the debt as the reward of his iniquity? I can point to a single individual in this State, who will tell the Legislature the fact, that he, as trustee and guardian, has a sum invested in these loans of more than twenty thousand dollars for his wards,

and that he made the investment in the last two years, mainly, if not solely, in consequence of the unanimous action of the Legislature, and the solemn report it published, declaring the loan to be safe beyond all controversy. Your Memorialist has unbounded confidence that the Legislature of Delaware will never commit any act, for any consideration, which can justly subject itself to any dishonourable imputation. There is a common faith among joint creditors, in the same security, necessarily recognised in every civilized community, that one of those creditors shall do no act to injure or impair the common fund; and there exists no body of men on earth, however elevated, that can be absolved by their position from the discharge of the duty which that common faith imposes.

It is remarkable that the objectionable Memorial of the Canal Company, to which I have referred, does not even propose to remunerate the Rail-road Companies for the immense sums expended and paid to the State as a bonus for the right of carrying passengers between the Appoquinimink and the Christiana. In order to gain a benefit to themselves, they propose to destroy the value of the property entrusted to my charge, and yet they do not even breathe a syllable about indemnity for the enormous sums received by the State of Delaware, as the express consideration for the very thing they now seek to destroy. We have assumed the whole twenty-five thousand dollars which the State of Delaware lost by this Canal Company. Do they now even propose to assume that debt upon themselves? We have also paid to the State *twenty-five thousand dollars* in cash, by way of interest and dividends on the same investment, which was wasted and lost by the Canal Company. Do they even propose to pay that back to the Rail-road Company? As a consideration for the same grant to us of the right to carry passengers between the Christiana and the Appoquinimink, we were compelled to make the turnpike roads between New Castle and Frenchtown, toll-free to the public for ever; for which we had to pay the Stockholders in those roads *fifty thousand dollars*, about twelve years ago; the interest on which sum, added to the principal, now shows us to be losers, by that single part of the transaction, to the amount of about *eighty-five thousand dollars*. Have they proposed, or do they now propose, in their Memorial, to reimburse us one dollar of this large sum, which was another part of the consideration of the grant made to us by the State, the value of which is

utterly lost by the proposed change in their charter? As a further part of the consideration of the grant made to us, the State at the same time subjected us to an additional bonus or tax of *one-fourth of one per cent.*, on the capital of the New Castle Rail-road; on account of which additional tax we have also paid to the State already, about *eighteen thousand dollars*. Do they propose to reimburse to us any part of that, or even to assume the payment of the same tax in future, or to relieve us in any way from the future payment of it? Now here are sums, which we have paid, or secured for the State, and by its orders, and for the benefit of its people, amounting to more than *one hundred and fifty thousand dollars*, to prevent a competition for passengers between the Christiana and the Appoquinimink; which, whenever it is entered upon, must prove equally ruinous, both to us and those who carry it on against us. I know that they contend they would be benefited by it. For the sake of argument, assume that to be true. Then, if they are to receive the benefit of all this travel, to secure which we have paid more than *one hundred and fifty thousand dollars*, as I have shown you, upon what principle of common honesty can they ask for the privilege of being paid toll for that very travel, without reimbursing us the sum which the State compelled us to pay for the same thing? I say for the same thing, because if the State grants them the right to take the toll for passengers, as they ask it, the grant to us is not worth a copper, although we have already paid more than one hundred and fifty thousand dollars for it.

There is yet another consideration to which the Memorial of the Canal Company has not alluded. This State sunk *fifteen thousand dollars* of interest on the investment of twenty-five thousand dollars in the stock of the Chesapeake and Delaware Canal Company, for which it has never been repaid one cent. This was the amount of interest which had accrued and become due, between the time of the investment of the twenty-five thousand dollars in that stock, and the period when the Rail-road Company was made to assume the same under its contract with the State. Your Memorialist would respectfully ask the consideration of your honourable bodies to the fact, that while the Canal Company has sunk this money for the State, and has never paid one sixpence by way either of bonus or tax, it has taken care, by a provision in its Charter, to put it out of your power to tax it in all time to come. It has never paid a dollar

to support the government of Delaware, and it never can, for its Charter prohibits it from doing so, and denies you all power to levy any tax upon it. It is as completely removed from your authority in this respect, as if it were a foreign corporation, and located in a different State. On the other hand, how stand the Rail-road Companies? They have been heavily taxed by you since their origin, and they will continue to help support the government of the State as long as time lasts, unless they are destroyed by hostile legislation. There is no provision in their Charters to prevent you from taxing them to any amount which they can bear, and which the future exigencies of the State may require. Should a foreign foe invade the territories of Delaware in time of war, her Rail-roads, like other property in the State, will be liable to be taxed in any sum she pleases to demand to aid her in the struggle. But how is it with this Canal Company, which, in its first Memorial, seems studiously to have attempted to excite hostility against those whose property is entrusted to my care, by designating them as an odious and grasping monopoly. The most odious monopoly which I know of, is that which this very Canal Company itself enjoys, being, as it is, exempt for ever from all taxation; and the owners of it, unlike the owners of any other property in the State, never bound to contribute one cent to the support of government, either in peace or war.

In conclusion, your Memorialist asks the privilege, which has been invariably accorded to all other men whose interests have been attacked in the legislative body, of being heard, by counsel, upon all subjects connected with the prayer of the Canal Company, either before a committee or at the bar of the House, as to your honourable bodies may seem proper. And he will ever pray, &c.

M. BROOK E. BUCKLEY, *President.*

Memorial of the Trustees in the Rail-road Mortgages, referred to in the foregoing Memorial—To the Honourable the Senate and House of Representatives of the State of Delaware, in General Assembly met:—

The undersigned, Trustees in certain Mortgages given by the Philadelphia, Wilmington and Baltimore Rail-road Company, to secure

its various loans, have seen a Memorial presented to your honourable bodies by the Chesapeake and Delaware Canal Company, praying for the grant of a new privilege, that of charging a toll on passengers.

Anxious to perform their duty to those they represent, and particularly to the State of Delaware, they beg leave to represent to you, from their own knowledge, that the income of the Company has been barely sufficient to meet its expenses and the interest upon its loans, and has been entirely inadequate to provide any sinking fund for their gradual extinguishment, as provided for in the said Mortgages.

They are equally certain, that should the Legislature grant the said privilege, thereby encouraging the Canal Company to a strife with the Rail-road Company for the passenger business, the revenue of the Rail-road Company will be so diminished, that the interest on the said loans can no longer be paid.

The Charters of these two Companies seem to define the appropriate business of each; giving to one the freight, and to the other the profit of carrying passengers. Each work, by its nature, is peculiarly fitted for the service for which it was intended.

Your Memorialists think the Legislature would injure each by encouraging, and confer benefits on each, as well as on the public, by preventing a contest between them.

That the object of the Canal Company is to injure the Rail-road Company for its own supposed benefit, is apparent in that part of its Memorial in which the Rail-road Company is styled "an oppressive, unjust, and odious monopoly," and the power of the Legislature is invoked for its destruction.

A work which confers such extensive benefits on the trade of the Union, and which is so important to the interests of Delaware, whilst its suffering Stockholders, whose enterprise and capital created it, are receiving no dividends, scarcely deserves such a stigma. Your Memorialists cannot believe, that a reproach so unmerited and gratuitous, will be received with favour by the Legislature, or people of Delaware.

They feel it their duty as Trustees, to make this statement to your honourable bodies, and to oppose by all lawful and proper means, the attempt made by the Canal Company to encroach upon the legitimate business of the Rail-road Company. They believe

that this attempt, if successful, will seriously injure the security of the Mortgages, and jeopardize the interests they represent; among them, that of the State of Delaware.

Your Memorialists therefore pray your honourable bodies, that no act may be passed granting new privileges to the Canal Company; but that both Companies may be left to the enjoyment of the rights derived from their Charters, and the business for which they were respectively intended and are peculiarly calculated.

And your Memorialists will, &c. &c.

SAM'L BRECK,
C. H. FISHER,
EDWIN SWIFT,
Trustees.

To the Honourable the Senate and House of Representatives of the State of Delaware in General Assembly met :—

The Chesapeake and Delaware Canal Company regrets that it is again obliged to trespass upon the patience and attention of your honourable bodies. The Memorial, however, of the President of the Philadelphia, Wilmington and Baltimore Rail-road Company, contains statements affecting the rights of the Canal Company, and the position which it now occupies before your honourable bodies, which cannot be disregarded or silently submitted to, consistently with that respect which is due from it to the Legislature of the State, and the care which it is bound to bestow in protecting itself from unjust and injurious attacks, from whatever quarter these attacks may come. The undersigned indignantly denies the allegation that the offer made by it to guarantee the payment of the interest which will hereafter fall due to the State of Delaware on its loan to the Philadelphia, Wilmington and Baltimore Rail-road Company, was intended as a douceur or reward to the State for destroying the property of the Rail-road Company. Your Memorialists again repeat, and they believe your honourable bodies will give them credit for the honesty and truth of the assertion, that the passage of the law granting to the Canal Company the right to charge toll on passengers cannot injuriously affect the interests of the State, nor of the other Loan-holders, whose loans are secured by the mortgage of May 21st,

1842. The offer to guarantee was made to evince, by the best possible evidence, the sincerity of this belief—it was made with a full determination to pay the said interest, if, by the terms of the guarantee, it should become liable for its payment, and with a full knowledge that it would be able to execute said determination; it was made, however, at the same time, with no expectation that the passage of the said law could by any possibility take away from, or deprive the Rail-road Company of the means to pay its interest. The Canal Company has been subjected to the ungenerous reproach, that it is a notoriously insolvent Corporation, and its ability to guarantee the State's interest is sneeringly doubted and questioned. Let it be remembered by your honourable bodies, that the Loanholders and creditors of the Canal Company, by an act of the Legislature of this State, and of the States of Maryland and Pennsylvania, form an integral part of the Corporation, and much the larger part; they stand on the same footing with the original Stockholders, are represented at its board, and vote on all questions which can come before a Stockholder's meeting. The Canal Company, thus composed of its Loanholders and Stockholders, independently of the debts due its Loanholders, has the ability to pay the amount of this guarantee and all its other debts, and does pay them as they fall due. If, then, these Loanholders consent to guarantee the interest which is to become due the State on its loan, and have at any time to make good the guarantee, no one will have a right to complain. This much may serve to show your honourable bodies, how an insolvent Corporation can guarantee the payment of a debt. The Rail-road Company answers the question, how the grant to charge toll on passengers can induce passengers to take the Canal route in preference to that by their Rail-roads, by saying, "that any citizen may lawfully enter your State-house, but if you will offer the door-keeper twenty-five cents per head for every man, woman and child, whom he and his assistants can persuade to enter it, we shall soon see the house filled." It is perfectly true that every citizen, whether prompted by business, curiosity, whim or caprice, may now lawfully enter your State-house. It is doubtful whether the exercise by the door-keeper of a right to charge these citizens, who enter the State-house from any of these motives, can have the effect to *increase the number who thus enter it*, if each one has twenty-five cents to pay for admission. If it should have this effect, the inference

is an entirely fair and natural one, that the public have a strong disposition to patronize the door-keeper, and there is no good reason why they should not be allowed to indulge this disposition.

The Rail-road Companies have boasted much of the large sums they have heretofore paid and still are obliged annually to pay to the State of Delaware, and reproach the Canal Company with its exemption from this liability. It is true, that these Rail-road Companies have placed themselves under obligations to pay large sums of money to the State of Delaware. They have, however, voluntarily placed themselves in this situation, and they have received, in return, a full and valuable consideration therefor. These Companies have offered to pay for certain privileges and franchises, and the State has accepted their offer. Let each member of your honourable bodies carefully examine the acts of Assembly granting these privileges and franchises; let him consider, that at the time these offers were made by the Rail-road Companies, and the said privileges and franchises were granted, the Canal Company was actually carrying passengers, and receiving toll from them, under the impression and belief, not only of the Canal Company, but of every body else, including the Rail-road Companies, that it had the right so to do. The Rail-road Companies, at that time, thought these privileges and franchises were worth paying for; how then, in the name of common sense, can it be said, that the grant to the Canal Company to charge toll at this day will render these privileges and franchises less valuable than they were at the time they were purchased? Why should the Canal Company, under these circumstances, offer to remunerate the Rail-road Companies for the sums of money they have paid to the State, in consideration of their said grants? It is denied that the Canal Company proposes to destroy the value of these privileges and franchises, for which the Rail-road Companies have paid such immense (as they deem them to be) sums of money; it seeks only to protect its own interest, without coming in conflict with that of either of the Rail-roads; and, in pursuit of that object, humbly prays your honourable bodies to give it the right to charge toll. All it asks is, that passengers may be required to pay a toll for the privilege they enjoy of passing through the Canal. The Canal Company has no desire to see how much it can injure the Rail-roads, and it is believed that no prudent man in the Rail-road Companies will wish to make an effort to ascertain

how much harm they can do the Canal Company. The Companies, both Canal and Rail-road, will be in no danger of shipwreck, if they each shall attend to their own business; certainly no such danger can arise from the grant to the Canal Company of the power to charge tolls. The resort to the plank will be unnecessary, and, therefore, no contest will take place as to its exclusive possession.

And your Memorialists will ever pray, &c.

The Chesapeake and Delaware Canal Company, by its President,

C. NEWBOLD, Jr.

Dover, January 21st, 1845.

An Act for the Protection of the Investment of this State in the Loan of the Philadelphia, Wilmington and Baltimore Rail-road Company, and for settling the Difficulties between the said Rail-road Company and the Chesapeake and Delaware Canal Company.

Whereas, the interest of this State is identified with the prosperity of the Philadelphia, Wilmington and Baltimore Rail-road Company, in whose loan the public money has been invested by authority of the Legislature: And whereas, it is of the highest importance to the commercial public, and to the whole Union, that this portion of the internal improvements of the country should be sustained and protected: And whereas, also, such competition between the Chesapeake and Delaware Canal Company, and the said Philadelphia, Wilmington and Baltimore Rail-road Company, and the New Castle and French Town Turnpike and Rail-road Company, as will be destructive to each of the said Companies, ought to be avoided as detrimental to the travelling community, and highly injurious to the interests of the State in each of the said Rail-road Companies.

SECTION 1. *Therefore, be it enacted by the Senate and House of Representatives of the State of Delaware, in General Assembly met,* That the said New Castle and French Town Turnpike and Rail-road Company shall, in each and every year hereafter, run a daily line from Philadelphia to Baltimore, and from Baltimore to Philadelphia, for the transportation of passengers, commencing on

the 1st day of April, and ending on the 1st day of November. And it shall not, at any time, be lawful for the said New Castle and French Town Turnpike and Rail-road Company to charge for the transportation of passengers, from either of said cities to the other, a sum exceeding three dollars for each adult passenger, and for each minor passenger, not above the age of twelve years, a sum not exceeding one-half the charge for an adult passenger.

SECT. 2. *And be it further enacted*, That the said Philadelphia, Wilmington and Baltimore Rail Road Company shall, in each and every year hereafter, run a daily line from Philadelphia to Baltimore, and from Baltimore to Philadelphia, for the transportation of passengers, commencing on the 2d of October, and ending on the 31st day of March. And it shall not be lawful for the last said Rail-road Company to charge for the transportation of passengers from either of said cities to the other, a sum exceeding four dollars during said period, and three dollars during the residue of the year for each adult passenger, and for each minor passenger, not above the age of twelve years, a sum not exceeding one-half the charge for an adult passenger.

SECT. 3. *And be it further enacted*, That upon an obligation, under the common seals of the New Castle and French Town Turnpike and Rail-road Company, and of the Philadelphia, Wilmington and Baltimore Rail-road Company, securing to the State of Delaware, for the benefit of the School Fund, the payment of the sum of six thousand five hundred dollars, in the following instalments, to wit: the sum of \$2000, with lawful interest on the whole sum, of \$6500, from the date of the passage of this act, on or before the first day of July, in the year of our Lord, 1846; the further sum of \$2000, with lawful interest on the whole sum then unpaid, on or before the first day of July, in the year of our Lord, 1848; and the remaining sum of \$2500, with lawful interest on the whole balance, on or before the first day of July, in the year of our Lord, 1850; then, and in such case, the State Treasurer, or other proper officer of this State, is hereby directed to assign and transfer to the said New Castle and French Town Turnpike and Rail-road Company twenty-one shares of the stock, held by this State, in the United States Bank of Pennsylvania, and to the said Philadelphia, Wilmington and Baltimore Rail-road Company, forty-four shares of the stock last aforesaid.

SECT. 4. *And be it further enacted*, That upon the acceptance of the first section of this act, by the said New Castle and French Town Turnpike and Rail-road Company, and of the second section, by the said Philadelphia, Wilmington and Baltimore Rail-road Company, and of the third section of this act, by the said New Castle and French Town Turnpike and Rail-road Company, and also by the Philadelphia, Wilmington and Baltimore Rail-road Company, such acceptance to be signified by the President and Directors of the said Rail-road Companies, respectively, by some writing or writings under the several and respective common seals of incorporation of the said Rail-road Companies, to be transmitted to the Governor of this State, to be filed in the office of the Secretary of State; then, and in such case, in consideration thereof, and of the provisions contained in the first, second and third sections of this act, the faith of the State of Delaware shall be, and is hereby pledged, until the first day of April, A. D. 1856, that no power shall, during the said period, be granted to the said Chesapeake and Delaware Canal Company to charge a toll on passengers transported on the waters of their said Canal, or to carry passengers thereon: *Provided always*, that nothing in this act contained shall be construed to prevent passengers from being transported on the waters of said Canal in transient vessels, or way-passengers, to any point on the line of said Canal, or any passengers other than those who may be transported, by any line or lines plying between the cities of Philadelphia and Baltimore, or in any vessels propelled, in whole or in part, by steam.

SECT. 5. *And be it further enacted*, That from and after the passing of this act, it shall and may be lawful for the said Chesapeake and Delaware Canal Company, and the said Philadelphia, Wilmington and Baltimore Rail-road Company, and the said New Castle and French Town Turnpike and Rail-road Company, to enter, by way of compromise, into a mutual contract or agreement in regard to tolls, passengers, and the transportation of merchandise, commodities and produce, and for conducting the business of each of the said Companies as authorized by their respective Charters, in such manner as shall be considered by their several Boards of Directors most conducive to the respective interests of each of the said Companies, and in order to prevent injurious competition between them.

SECT. 6. *And be it further enacted*, That upon such contract or

agreement being made and concluded upon by the said Canal Company and said Rail-road Companies, as provided in the preceding section, the said Canal Company and the said Rail-road Companies shall respectively certify, by some writing or writings, under their respective common seals of incorporation, to the Governor of the State of Delaware, that they have made and entered into such contract or agreement as mentioned in the preceding section; which certificate shall be filed in the office of the Secretary of State: and thereupon it is hereby declared, that the Attorney General, for the time being, be and he is hereby expressly enjoined and prohibited from instituting and prosecuting a writ of quo warranto, or an information in the nature of a writ of quo warranto, or any other legal proceeding whatever, against the said Chesapeake and Delaware Canal Company, for any toll which has heretofore been charged by the said Company upon any passenger passing their said Canal.

Passed at Dover the 12th day of February, 1845.

After the reading of the Memorial and Protest of the Chesapeake and Delaware Canal Company, on 5th February, 1845, this Bill was amended and passed, as above.



To the Honourable the Senate and House of Representatives of the State of Delaware, in General Assembly met:

The Chesapeake and Delaware Canal Company respectfully represent, that the bill now before your honourable bodies, entitled "An Act for the protection of the investment of the State in the loan of the Philadelphia, Wilmington, and Baltimore Rail-road Company, and for settling the difficulties between the said Rail-road Company, and the Chesapeake and Delaware Canal Company," has been introduced into the Legislature without the concurrence of the latter Company, and as it proposes by the extraordinary pledge which it exacts of the State in behalf of the said Rail-road Company, not only to close the doors of the Legislature forever against the recent application of your Memorialists, but even purports upon its face to abridge the powers which they already possess, they must be allowed in the exercise of the rights which are yet left them, respectfully but

earnestly to remonstrate against the passage of the same into a law. It does not become your Memorialists to remind the Legislature, that the practice of pledging the public faith upon slight and temporary considerations, has already been carried to an extent which is scarcely warranted by public opinion, but they may say without fear of giving displeasure to any one, that the proposition to pledge forever the faith of the State for the purposes stated in the said bill and upon the frivolous and trivial considerations which it mentions, would, it is confidently believed, constitute in the present progress of public improvements and human inventions, an act of impolicy altogether unexampled in the history of modern legislation. Your Memorialists have been led to these remarks, from the fact that it is proposed in the said bill, that in consideration of the said Rail-roads consenting to run lines upon their roads for the accommodation of passengers, at certain seasons therein mentioned, and at prices which they have rarely heretofore exceeded, the faith of the State is to be pledged that the Canal Company shall never be authorized to charge toll upon passengers, or to convey passengers through the said Canal in any other than transient and sail vessels. Your Memorialists do not deem it necessary to comment upon the extraordinary nature of this proposition; but pass such a bill as this, and you may discover with mortification and regret, in less than five years from the time this perpetual pledge is given, that the best interests of both Companies as well as of the people of the State, have been grossly compromised by it. Your Memorialists cannot believe that a proposition fraught with such disastrous consequences, so unjust and unwarrantable towards the Canal Company, so unusual and unreasonable in itself, and so improper towards the people of the State, and those whom they may hereafter select to represent them, can ever receive the favourable notice and consideration of the Legislature. Your Memorialists are at a loss to understand the motive of this singular request on the part of the Rail-road Company, unless it springs from a prospective distrust of those who may be destined to succeed you in the power which you now exercise, or a secret belief that the present Legislature is rather more complaisant towards them than another Legislature may prove to be, a sentiment which your Memorialists utterly disavow, as derogatory to the character of the present General Assembly, and which none but the jealous and the timid could for a moment entertain. The application of the

Canal Company has been refused after careful and anxious deliberation on your part; and submitting without a murmur of complaint to the decision which you have pronounced upon it, your Memorialists have concluded to make no further applications to your honourable bodies, and all they now desire is to entreat you in the emphatic language which has been so highly commended by the counsel for the Rail-road Company, *to let them alone*. If the Legislature will adopt this prudent maxim, and enforce the Rail-road to adopt it on their part, the Canal Company will immediately reciprocate the sentiment, and let both the Legislature and Rail-road alone. All that is now desired on the part of the Canal Company, is that the Legislature will leave the two Companies to the free and lawful exercise of their respective corporate powers, and they ask that nothing may be done on your part to abridge or restrict the chartered rights of your Memorialists, or to place them out of the pale of your future favour and protection. Nor can your Memorialists perceive the necessity of any further legislation to enable the two Companies to adjust any differences existing between them, by mutual agreement and arrangement. If such authority be necessary from the Legislature to authorize the Canal Company to enter into such an arrangement, it is manifest that the authority would be incomplete and of no effect until assented to by the Legislature of the State of Maryland, if not of Pennsylvania, and your Memorialists are too well apprized of the sentiments and views which predominate in the Legislature of Maryland, to presume for a moment that they would ratify it. Indeed, should the bill now before you be passed, your Memorialists have reason to believe, that it would produce great dissatisfaction in that body, and would expose the Canal Company to further hostile proceedings from that quarter. It is evident from what has already been said upon this subject, that the interests of Maryland and Delaware, as they are viewed and considered by their respective Legislatures, do not coincide on this point, but are in fact diametrically opposed to each other, and the effort in this State to make the business of the Canal subservient to the business of the Rail-road, would, it is apprehended, not only be regarded in that State as detrimental to her interests, but it would be regarded as an improper interference on your part with the original purposes jointly entertained by the two States at the time of incorporating it, and should the Canal Company assent to the legislation now proposed

by the friends of the Rail-road Company, it would surely subject them to the sore displeasure and resentment of the Legislature of that State; and from these circumstances your Memorialists are constrained to say that if the bill now before the Legislature should be passed into a law, no arrangement of the kind contemplated by the friends of it, can ever be effected in their judgment between the Canal and Rail-road Companies.

Believing themselves competent to manage and conduct their own business, to maintain and preserve their just rights and powers, and to settle their own difficulties with all persons, your Memorialists desire no legislation for this purpose, and having been refused the favour which they have but lately solicited at your hands, they think it is as little as the Legislature can do, to dismiss them without imposing terms and disabilities upon them, and to leave them now and hereafter to the full enjoyment of the rights and privileges which their Charter lawfully confers upon them. They do therefore, with a full conviction of the obvious justice and equity of this their last request to your honourable bodies, respectfully and earnestly protest against the passage of the bill above mentioned.

And as in duty bound, your Memorialists will ever pray, &c.

The Chesapeake and Delaware Canal Company, by their President,

C. NEWBOLD, Jr.

Dover, February 5, 1845.

At the request of the Directors of the Chesapeake and Delaware Canal Company, we have read and considered an Act passed by the Legislature of the State of Delaware on the 12th of February, 1845, entitled, "An Act for the Protection of the Investment of this State in the Loan of the Philadelphia, Wilmington and Baltimore Rail-road Company, and for settling the difficulties between the said Rail-road Company and the Chesapeake and Delaware Canal Company," and are of opinion,—

1. That the Act does not prohibit passengers from going through the Canal in vessels of any description.

2. That under its Charter, the Company has a right to permit

passengers to go through the Canal in any vessels, boats or barges, whether propelled by steam or otherwise.

3. That any law passed by either of the States of Delaware, Maryland, or Pennsylvania, prohibiting the Company from permitting passengers to go through the Canal, would be inoperative, without the assent of the other two of the said States, and of the Canal Company.

(Signed)

HOR. BINNEY,
W. M. MEREDITH.

Philadelphia, 19th February, 1845.